

By: Representative Fleming

To: Appropriations

HOUSE BILL NO. 172

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 PROHIBIT CONTRACTORS FROM BIDDING ON ANY PUBLIC CONSTRUCTION OR
3 RENOVATION PROJECT FOR ANY STATE AGENCY IF THE CONTRACTOR ALREADY
4 HAS OUTSTANDING CONTRACTS WITH STATE AGENCIES FOR PUBLIC
5 CONSTRUCTION OR RENOVATION PROJECTS OF WHICH THE TOTAL AMOUNT IS
6 \$30,000,000.00 OR MORE; AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1.** Section 31-7-13, Mississippi Code of 1972, is
9 amended as follows:

10 31-7-13. All agencies and governing authorities shall
11 purchase their commodities and printing; contract for garbage
12 collection or disposal; contract for solid waste collection or
13 disposal; contract for sewage collection or disposal; contract for
14 public construction; and contract for rentals as herein provided.

15 (a) **Bidding procedure for purchases not over \$3,500.00.**
16 Purchases which do not involve an expenditure of more than Three
17 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
18 shipping charges, may be made without advertising or otherwise
19 requesting competitive bids. Provided, however, that nothing
20 contained in this paragraph (a) shall be construed to prohibit any
21 agency or governing authority from establishing procedures which
22 require competitive bids on purchases of Three Thousand Five
23 Hundred Dollars (\$3,500.00) or less.

24 (b) **Bidding procedure for purchases over \$3,500.00 but**
25 **not over \$15,000.00.** Purchases which involve an expenditure of
26 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
27 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
28 freight and shipping charges may be made from the lowest and best
29 bidder without publishing or posting advertisement for bids,



30 provided at least two (2) competitive written bids have been
31 obtained. Any governing authority purchasing commodities pursuant
32 to this paragraph (b) may authorize its purchasing agent, or his
33 designee, with regard to governing authorities other than
34 counties, or its purchase clerk, or his designee, with regard to
35 counties, to accept the lowest and best competitive written bid.
36 Such authorization shall be made in writing by the governing
37 authority and shall be maintained on file in the primary office of
38 the agency and recorded in the official minutes of the governing
39 authority, as appropriate. The purchasing agent or the purchase
40 clerk, or their designee, as the case may be, and not the
41 governing authority, shall be liable for any penalties and/or
42 damages as may be imposed by law for any act or omission of the
43 purchasing agent or purchase clerk, or their designee,
44 constituting a violation of law in accepting any bid without
45 approval by the governing authority. The term "competitive
46 written bid" shall mean a bid submitted on a bid form furnished by
47 the buying agency or governing authority and signed by authorized
48 personnel representing the vendor, or a bid submitted on a
49 vendor's letterhead or identifiable bid form and signed by
50 authorized personnel representing the vendor. Bids may be
51 submitted by facsimile, electronic mail or other generally
52 accepted method of information distribution. Bids submitted by
53 electronic transmission shall not require the signature of the
54 vendor's representative unless required by agencies or governing
55 authorities.

56 (c) **Bidding procedure for purchases over \$15,000.00.**

57 (i) **Publication requirement.** Purchases which
58 involve an expenditure of more than Fifteen Thousand Dollars
59 (\$15,000.00), exclusive of freight and shipping charges may be
60 made from the lowest and best bidder after advertising for
61 competitive sealed bids once each week for two (2) consecutive
62 weeks in a regular newspaper published in the county or



63 municipality in which such agency or governing authority is
64 located. The date as published for the bid opening shall not be
65 less than seven (7) working days after the last published notice;
66 however, if the purchase involves a construction project in which
67 the estimated cost is in excess of Fifteen Thousand Dollars
68 (\$15,000.00), such bids shall not be opened in less than fifteen
69 (15) working days after the last notice is published and the
70 notice for the purchase of such construction shall be published
71 once each week for two (2) consecutive weeks. The notice of
72 intention to let contracts or purchase equipment shall state the
73 time and place at which bids shall be received, list the contracts
74 to be made or types of equipment or supplies to be purchased, and,
75 if all plans and/or specifications are not published, refer to the
76 plans and/or specifications on file. If there is no newspaper
77 published in the county or municipality, then such notice shall be
78 given by posting same at the courthouse, or for municipalities at
79 the city hall, and at two (2) other public places in the county or
80 municipality, and also by publication once each week for two (2)
81 consecutive weeks in some newspaper having a general circulation
82 in the county or municipality in the above provided manner. On
83 the same date that the notice is submitted to the newspaper for
84 publication, the agency or governing authority involved shall mail
85 written notice to, or provide electronic notification to the main
86 office of the Mississippi Contract Procurement Center that
87 contains the same information as that in the published notice.

88 (ii) **Bidding process amendment procedure.** If all
89 plans and/or specifications are published in the notification,
90 then the plans and/or specifications may not be amended. If all
91 plans and/or specifications are not published in the notification,
92 then amendments to the plans/specifications, bid opening date, bid
93 opening time and place may be made, provided that the agency or
94 governing authority maintains a list of all prospective bidders
95 who are known to have received a copy of the bid documents and all



96 such prospective bidders are sent copies of all amendments. This
97 notification of amendments may be made via mail, facsimile,
98 electronic mail or other generally accepted method of information
99 distribution. No addendum to bid specifications may be issued
100 within two (2) working days of the time established for the
101 receipt of bids unless such addendum also amends the bid opening
102 to a date not less than five (5) working days after the date of
103 the addendum.

104 (iii) **Filing requirement.** In all cases involving
105 governing authorities, before the notice shall be published or
106 posted, the plans or specifications for the construction or
107 equipment being sought shall be filed with the clerk of the board
108 of the governing authority. In addition to these requirements, a
109 bid file shall be established which shall indicate those vendors
110 to whom such solicitations and specifications were issued, and
111 such file shall also contain such information as is pertinent to
112 the bid.

113 (iv) **Specification restrictions.** Specifications
114 pertinent to such bidding shall be written so as not to exclude
115 comparable equipment of domestic manufacture. Provided, however,
116 that should valid justification be presented, the Department of
117 Finance and Administration or the board of a governing authority
118 may approve a request for specific equipment necessary to perform
119 a specific job. Further, such justification, when placed on the
120 minutes of the board of a governing authority, may serve as
121 authority for that governing authority to write specifications to
122 require a specific item of equipment needed to perform a specific
123 job. In addition to these requirements, from and after July 1,
124 1990, vendors of relocatable classrooms and the specifications for
125 the purchase of such relocatable classrooms published by local
126 school boards shall meet all pertinent regulations of the State
127 Board of Education, including prior approval of such bid by the
128 State Department of Education.



129 (d) **Lowest and best bid decision procedure.**

130 (i) **Decision procedure.** Purchases may be made
131 from the lowest and best bidder. In determining the lowest and
132 best bid, freight and shipping charges shall be included.
133 Life-cycle costing, total cost bids, warranties, guaranteed
134 buy-back provisions and other relevant provisions may be included
135 in the best bid calculation. All best bid procedures for state
136 agencies must be in compliance with regulations established by the
137 Department of Finance and Administration. If any governing
138 authority accepts a bid other than the lowest bid actually
139 submitted, it shall place on its minutes detailed calculations and
140 narrative summary showing that the accepted bid was determined to
141 be the lowest and best bid, including the dollar amount of the
142 accepted bid and the dollar amount of the lowest bid. No agency
143 or governing authority shall accept a bid based on items not
144 included in the specifications.

145 (ii) **Construction project negotiations authority.**

146 If the lowest and best bid is not more than ten percent (10%)
147 above the amount of funds allocated for a public construction or
148 renovation project, then the agency or governing authority shall
149 be permitted to negotiate with the lowest bidder in order to enter
150 into a contract for an amount not to exceed the funds allocated.

151 (e) **Lease-purchase authorization.** For the purposes of
152 this section, the term "equipment" shall mean equipment, furniture
153 and, if applicable, associated software and other applicable
154 direct costs associated with the acquisition. Any lease-purchase
155 of equipment which an agency is not required to lease-purchase
156 under the master lease-purchase program pursuant to Section
157 31-7-10 and any lease-purchase of equipment which a governing
158 authority elects to lease-purchase may be acquired by a
159 lease-purchase agreement under this paragraph (e). Lease-purchase
160 financing may also be obtained from the vendor or from a
161 third-party source after having solicited and obtained at least



162 two (2) written competitive bids, as defined in paragraph (b) of
163 this section, for such financing without advertising for such
164 bids. Solicitation for the bids for financing may occur before or
165 after acceptance of bids for the purchase of such equipment or,
166 where no such bids for purchase are required, at any time before
167 the purchase thereof. No such lease-purchase agreement shall be
168 for an annual rate of interest which is greater than the overall
169 maximum interest rate to maturity on general obligation
170 indebtedness permitted under Section 75-17-101, and the term of
171 such lease-purchase agreement shall not exceed the useful life of
172 equipment covered thereby as determined according to the upper
173 limit of the asset depreciation range (ADR) guidelines for the
174 Class Life Asset Depreciation Range System established by the
175 Internal Revenue Service pursuant to the United States Internal
176 Revenue Code and regulations thereunder as in effect on December
177 31, 1980, or comparable depreciation guidelines with respect to
178 any equipment not covered by ADR guidelines. Any lease-purchase
179 agreement entered into pursuant to this paragraph (e) may contain
180 any of the terms and conditions which a master lease-purchase
181 agreement may contain under the provisions of Section 31-7-10(5),
182 and shall contain an annual allocation dependency clause
183 substantially similar to that set forth in Section 31-7-10(8).
184 Each agency or governing authority entering into a lease-purchase
185 transaction pursuant to this paragraph (e) shall maintain with
186 respect to each such lease-purchase transaction the same
187 information as required to be maintained by the Department of
188 Finance and Administration pursuant to Section 31-7-10(13).
189 However, nothing contained in this section shall be construed to
190 permit agencies to acquire items of equipment with a total
191 acquisition cost in the aggregate of less than Ten Thousand
192 Dollars (\$10,000.00) by a single lease-purchase transaction. All
193 equipment, and the purchase thereof by any lessor, acquired by
194 lease-purchase under this paragraph and all lease-purchase



195 payments with respect thereto shall be exempt from all Mississippi
196 sales, use and ad valorem taxes. Interest paid on any
197 lease-purchase agreement under this section shall be exempt from
198 State of Mississippi income taxation.

199 (f) **Alternate bid authorization.** When necessary to
200 ensure ready availability of commodities for public works and the
201 timely completion of public projects, no more than two (2)
202 alternate bids may be accepted by a governing authority for
203 commodities. No purchases may be made through use of such
204 alternate bids procedure unless the lowest and best bidder, for
205 reasons beyond his control, cannot deliver the commodities
206 contained in his bid. In that event, purchases of such
207 commodities may be made from one (1) of the bidders whose bid was
208 accepted as an alternate.

209 (g) **Construction contract change authorization.** In the
210 event a determination is made by an agency or governing authority
211 after a construction contract is let that changes or modifications
212 to the original contract are necessary or would better serve the
213 purpose of the agency or the governing authority, such agency or
214 governing authority may, in its discretion, order such changes
215 pertaining to the construction that are necessary under the
216 circumstances without the necessity of further public bids;
217 provided that such change shall be made in a commercially
218 reasonable manner and shall not be made to circumvent the public
219 purchasing statutes. In addition to any other authorized person,
220 the architect or engineer hired by an agency or governing
221 authority with respect to any public construction contract shall
222 have the authority, when granted by an agency or governing
223 authority, to authorize changes or modifications to the original
224 contract without the necessity of prior approval of the agency or
225 governing authority when any such change or modification is less
226 than one percent (1%) of the total contract amount. The agency or



227 governing authority may limit the number, manner or frequency of
228 such emergency changes or modifications.

229 (h) **Petroleum purchase alternative.** In addition to
230 other methods of purchasing authorized in this chapter, when any
231 agency or governing authority shall have a need for gas, diesel
232 fuel, oils and/or other petroleum products in excess of the amount
233 set forth in paragraph (a) of this section, such agency or
234 governing authority may purchase the commodity after having
235 solicited and obtained at least two (2) competitive written bids,
236 as defined in paragraph (b) of this section. If two (2)
237 competitive written bids are not obtained the entity shall comply
238 with the procedures set forth in paragraph (c) of this section.
239 In the event any agency or governing authority shall have
240 advertised for bids for the purchase of gas, diesel fuel, oils and
241 other petroleum products and coal and no acceptable bids can be
242 obtained, such agency or governing authority is authorized and
243 directed to enter into any negotiations necessary to secure the
244 lowest and best contract available for the purchase of such
245 commodities.

246 (i) **Road construction petroleum products price**
247 **adjustment clause authorization.** Any agency or governing
248 authority authorized to enter into contracts for the construction,
249 maintenance, surfacing or repair of highways, roads or streets,
250 may include in its bid proposal and contract documents a price
251 adjustment clause with relation to the cost to the contractor,
252 including taxes, based upon an industry-wide cost index, of
253 petroleum products including asphalt used in the performance or
254 execution of the contract or in the production or manufacture of
255 materials for use in such performance. Such industry-wide index
256 shall be established and published monthly by the Mississippi
257 Department of Transportation with a copy thereof to be mailed,
258 upon request, to the clerks of the governing authority of each
259 municipality and the clerks of each board of supervisors



260 throughout the state. The price adjustment clause shall be based
261 on the cost of such petroleum products only and shall not include
262 any additional profit or overhead as part of the adjustment. The
263 bid proposals or document contract shall contain the basis and
264 methods of adjusting unit prices for the change in the cost of
265 such petroleum products.

266 (j) **State agency emergency purchase procedure.** If the
267 executive head of any agency of the state shall determine that an
268 emergency exists in regard to the purchase of any commodities or
269 repair contracts, so that the delay incident to giving opportunity
270 for competitive bidding would be detrimental to the interests of
271 the state, then the provisions herein for competitive bidding
272 shall not apply and the head of such agency shall be authorized to
273 make the purchase or repair. Total purchases so made shall only
274 be for the purpose of meeting needs created by the emergency
275 situation. In the event such executive head is responsible to an
276 agency board, at the meeting next following the emergency
277 purchase, documentation of the purchase, including a description
278 of the commodity purchased, the purchase price thereof and the
279 nature of the emergency shall be presented to the board and placed
280 on the minutes of the board of such agency. The head of such
281 agency shall, at the earliest possible date following such
282 emergency purchase, file with the Department of Finance and
283 Administration (i) a statement under oath certifying the
284 conditions and circumstances of the emergency, and (ii) a
285 certified copy of the appropriate minutes of the board of such
286 agency, if applicable. On or before September 1 of each year, the
287 State Auditor shall prepare and deliver to the Senate Fees,
288 Salaries and Administration Committee, the House Fees and Salaries
289 of Public Officers Committee and the Joint Legislative Budget
290 Committee a report containing a list of all state agency emergency
291 purchases and supporting documentation for each emergency
292 purchases.



293 (k) **Governing authority emergency purchase procedure.**

294 If the governing authority, or the governing authority acting
295 through its designee, shall determine that an emergency exists in
296 regard to the purchase of any commodities or repair contracts, so
297 that the delay incident to giving opportunity for competitive
298 bidding would be detrimental to the interest of the governing
299 authority, then the provisions herein for competitive bidding
300 shall not apply and any officer or agent of such governing
301 authority having general or special authority therefor in making
302 such purchase or repair shall approve the bill presented therefor,
303 and he shall certify in writing thereon from whom such purchase
304 was made, or with whom such a repair contract was made. At the
305 board meeting next following the emergency purchase or repair
306 contract, documentation of the purchase or repair contract,
307 including a description of the commodity purchased, the price
308 thereof and the nature of the emergency shall be presented to the
309 board and shall be placed on the minutes of the board of such
310 governing authority.

311 (l) **Hospital purchase, lease-purchase and lease**
312 **authorization.**

313 (i) The commissioners or board of trustees of any
314 public hospital may contract with such lowest and best bidder for
315 the purchase or lease-purchase of any commodity under a contract
316 of purchase or lease-purchase agreement whose obligatory payment
317 terms do not exceed five (5) years.

318 (ii) In addition to the authority granted in
319 subparagraph (i) of this paragraph (l), the commissioners or board
320 of trustees is authorized to enter into contracts for the lease of
321 equipment or services, or both, which it considers necessary for
322 the proper care of patients if, in its opinion, it is not
323 financially feasible to purchase the necessary equipment or
324 services. Any such contract for the lease of equipment or
325 services executed by the commissioners or board shall not exceed a



326 maximum of five (5) years' duration and shall include a
327 cancellation clause based on unavailability of funds. If such
328 cancellation clause is exercised, there shall be no further
329 liability on the part of the lessee. Any such contract for the
330 lease of equipment or services executed on behalf of the
331 commissioners or board that complies with the provisions of this
332 subparagraph (ii) shall be excepted from the bid requirements set
333 forth in this section.

334 (m) **Exceptions from bidding requirements.** Excepted
335 from bid requirements are:

336 (i) **Purchasing agreements approved by department.**
337 Purchasing agreements, contracts and maximum price regulations
338 executed or approved by the Department of Finance and
339 Administration.

340 (ii) **Outside equipment repairs.** Repairs to
341 equipment, when such repairs are made by repair facilities in the
342 private sector; however, engines, transmissions, rear axles and/or
343 other such components shall not be included in this exemption when
344 replaced as a complete unit instead of being repaired and the need
345 for such total component replacement is known before disassembly
346 of the component; provided, however, that invoices identifying the
347 equipment, specific repairs made, parts identified by number and
348 name, supplies used in such repairs, and the number of hours of
349 labor and costs therefor shall be required for the payment for
350 such repairs.

351 (iii) **In-house equipment repairs.** Purchases of
352 parts for repairs to equipment, when such repairs are made by
353 personnel of the agency or governing authority; however, entire
354 assemblies, such as engines or transmissions, shall not be
355 included in this exemption when the entire assembly is being
356 replaced instead of being repaired.



357 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
358 of gravel or fill dirt which are to be removed and transported by
359 the purchaser.

360 (v) **Governmental equipment auctions.** Motor
361 vehicles or other equipment purchased from a federal or state
362 agency or a governing authority at a public auction held for the
363 purpose of disposing of such vehicles or other equipment. Any
364 purchase by a governing authority under the exemption authorized
365 by this subparagraph (v) shall require advance authorization
366 spread upon the minutes of the governing authority to include the
367 listing of the item or items authorized to be purchased and the
368 maximum bid authorized to be paid for each item or items.

369 (vi) **Intergovernmental sales and transfers.**
370 Purchases, sales, transfers or trades by governing authorities or
371 state agencies when such purchases, sales, transfers or trades are
372 made by a private treaty agreement or through means of
373 negotiation, from any federal agency or authority, another
374 governing authority or state agency of the State of Mississippi,
375 or any state agency of another state. Nothing in this section
376 shall permit such purchases through public auction except as
377 provided for in subparagraph (v) of this section. It is the
378 intent of this section to allow governmental entities to dispose
379 of and/or purchase commodities from other governmental entities at
380 a price that is agreed to by both parties. This shall allow for
381 purchases and/or sales at prices which may be determined to be
382 below the market value if the selling entity determines that the
383 sale at below market value is in the best interest of the
384 taxpayers of the state. Governing authorities shall place the
385 terms of the agreement and any justification on the minutes, and
386 state agencies shall obtain approval from the Department of
387 Finance and Administration, prior to releasing or taking
388 possession of the commodities.



389 (vii) **Perishable supplies or food.** Perishable
390 supplies or foods purchased for use in connection with hospitals,
391 the school lunch programs, homemaking programs and for the feeding
392 of county or municipal prisoners.

393 (viii) **Single source items.** Noncompetitive items
394 available from one (1) source only. In connection with the
395 purchase of noncompetitive items only available from one (1)
396 source, a certification of the conditions and circumstances
397 requiring the purchase shall be filed by the agency with the
398 Department of Finance and Administration and by the governing
399 authority with the board of the governing authority. Upon receipt
400 of that certification the Department of Finance and Administration
401 or the board of the governing authority, as the case may be, may,
402 in writing, authorize the purchase, which authority shall be noted
403 on the minutes of the body at the next regular meeting thereafter.
404 In those situations, a governing authority is not required to
405 obtain the approval of the Department of Finance and
406 Administration.

407 (ix) **Waste disposal facility construction**
408 **contracts.** Construction of incinerators and other facilities for
409 disposal of solid wastes in which products either generated
410 therein, such as steam, or recovered therefrom, such as materials
411 for recycling, are to be sold or otherwise disposed of; provided,
412 however, in constructing such facilities a governing authority or
413 agency shall publicly issue requests for proposals, advertised for
414 in the same manner as provided herein for seeking bids for public
415 construction projects, concerning the design, construction,
416 ownership, operation and/or maintenance of such facilities,
417 wherein such requests for proposals when issued shall contain
418 terms and conditions relating to price, financial responsibility,
419 technology, environmental compatibility, legal responsibilities
420 and such other matters as are determined by the governing
421 authority or agency to be appropriate for inclusion; and after



422 responses to the request for proposals have been duly received,
423 the governing authority or agency may select the most qualified
424 proposal or proposals on the basis of price, technology and other
425 relevant factors and from such proposals, but not limited to the
426 terms thereof, negotiate and enter contracts with one or more of
427 the persons or firms submitting proposals.

428 (x) **Hospital group purchase contracts.** Supplies,
429 commodities and equipment purchased by hospitals through group
430 purchase programs pursuant to Section 31-7-38.

431 (xi) **Information technology products.** Purchases
432 of information technology products made by governing authorities
433 under the provisions of purchase schedules, or contracts executed
434 or approved by the Mississippi Department of Information
435 Technology Services and designated for use by governing
436 authorities.

437 (xii) **Energy efficiency services and equipment.**
438 Energy efficiency services and equipment acquired by school
439 districts, community and junior colleges, institutions of higher
440 learning and state agencies or other applicable governmental
441 entities on a shared-savings, lease or lease-purchase basis
442 pursuant to Section 31-7-14.

443 (xiii) **Municipal electrical utility system fuel.**
444 Purchases of coal and/or natural gas by municipally-owned electric
445 power generating systems that have the capacity to use both coal
446 and natural gas for the generation of electric power.

447 (xiv) **Library books and other reference materials.**
448 Purchases by libraries or for libraries of books and periodicals;
449 processed film, video cassette tapes, filmstrips and slides;
450 recorded audio tapes, cassettes and diskettes; and any such items
451 as would be used for teaching, research or other information
452 distribution; however, equipment such as projectors, recorders,
453 audio or video equipment, and monitor televisions are not exempt
454 under this subparagraph.



455 (xv) **Unmarked vehicles.** Purchases of unmarked
456 vehicles when such purchases are made in accordance with
457 purchasing regulations adopted by the Department of Finance and
458 Administration pursuant to Section 31-7-9(2).

459 (xvi) **Election ballots.** Purchases of ballots
460 printed pursuant to Section 23-15-351.

461 (xvii) **Multichannel interactive video systems.**
462 From and after July 1, 1990, contracts by Mississippi Authority
463 for Educational Television with any private educational
464 institution or private nonprofit organization whose purposes are
465 educational in regard to the construction, purchase, lease or
466 lease-purchase of facilities and equipment and the employment of
467 personnel for providing multichannel interactive video systems
468 (ITSF) in the school districts of this state.

469 (xviii) **Purchases of prison industry products.**
470 From and after January 1, 1991, purchases made by state agencies
471 or governing authorities involving any item that is manufactured,
472 processed, grown or produced from the state's prison industries.

473 (xix) **Undercover operations equipment.** Purchases
474 of surveillance equipment or any other high-tech equipment to be
475 used by law enforcement agents in undercover operations, provided
476 that any such purchase shall be in compliance with regulations
477 established by the Department of Finance and Administration.

478 (xx) **Junior college books for rent.** Purchases by
479 community or junior colleges of textbooks which are obtained for
480 the purpose of renting such books to students as part of a book
481 service system.

482 (xxi) **Certain school district purchases.**
483 Purchases of commodities made by school districts from vendors
484 with which any levying authority of the school district, as
485 defined in Section 37-57-1, has contracted through competitive
486 bidding procedures for purchases of the same commodities.



487 (xxii) **Garbage, solid waste and sewage contracts.**
488 Contracts for garbage collection or disposal, contracts for solid
489 waste collection or disposal and contracts for sewage collection
490 or disposal.

491 (xxiii) **Municipal water tank maintenance**
492 **contracts.** Professional maintenance program contracts for the
493 repair or maintenance of municipal water tanks, which provide
494 professional services needed to maintain municipal water storage
495 tanks for a fixed annual fee for a duration of two (2) or more
496 years.

497 (xxiv) **Purchases of Mississippi Industries for the**
498 **Blind products.** Purchases made by state agencies or governing
499 authorities involving any item that is manufactured, processed or
500 produced by the Mississippi Industries for the Blind.

501 (xxv) **Purchases of state-adopted textbooks.**
502 Purchases of state-adopted textbooks by public school districts.

503 (xxvi) **Certain purchases under the Mississippi**
504 **Major Economic Impact Act.** Contracts entered into pursuant to the
505 provisions of Section 57-75-9(2) and (3).

506 (xxvii) **Used heavy or specialized machinery or**
507 **equipment for installation of soil and water conservation**
508 **practices purchased at auction.** Used heavy or specialized
509 machinery or equipment used for the installation and
510 implementation of soil and water conservation practices or
511 measures purchased subject to the restrictions provided in
512 Sections 69-27-331 through 69-27-341. Any purchase by the State
513 Soil and Water Conservation Commission under the exemption
514 authorized by this subparagraph shall require advance
515 authorization spread upon the minutes of the commission to include
516 the listing of the item or items authorized to be purchased and
517 the maximum bid authorized to be paid for each item or items.



518 (xxviii) **Hospital lease of equipment or services.**

519 Leases by hospitals of equipment or services if the leases are in
520 compliance with paragraph (l)(ii).

521 (n) **Term contract authorization.** All contracts for the
522 purchase of:

523 (i) All contracts for the purchase of commodities,
524 equipment and public construction (including, but not limited to,
525 repair and maintenance), may be let for periods of not more than
526 sixty (60) months in advance, subject to applicable statutory
527 provisions prohibiting the letting of contracts during specified
528 periods near the end of terms of office. Term contracts for a
529 period exceeding twenty-four (24) months shall also be subject to
530 ratification or cancellation by governing authority boards taking
531 office subsequent to the governing authority board entering the
532 contract.

533 (ii) Bid proposals and contracts may include price
534 adjustment clauses with relation to the cost to the contractor
535 based upon a nationally published industry-wide or nationally
536 published and recognized cost index. The cost index used in a
537 price adjustment clause shall be determined by the Department of
538 Finance and Administration for the state agencies and by the
539 governing board for governing authorities. The bid proposal and
540 contract documents utilizing a price adjustment clause shall
541 contain the basis and method of adjusting unit prices for the
542 change in the cost of such commodities, equipment and public
543 construction.

544 (o) **Purchase law violation prohibition and vendor**
545 **penalty.** No contract or purchase as herein authorized shall be
546 made for the purpose of circumventing the provisions of this
547 section requiring competitive bids, nor shall it be lawful for any
548 person or concern to submit individual invoices for amounts within
549 those authorized for a contract or purchase where the actual value
550 of the contract or commodity purchased exceeds the authorized



551 amount and the invoices therefor are split so as to appear to be
552 authorized as purchases for which competitive bids are not
553 required. Submission of such invoices shall constitute a
554 misdemeanor punishable by a fine of not less than Five Hundred
555 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
556 or by imprisonment for thirty (30) days in the county jail, or
557 both such fine and imprisonment. In addition, the claim or claims
558 submitted shall be forfeited.

559 (p) **Electrical utility petroleum-based equipment**
560 **purchase procedure.** When in response to a proper advertisement
561 therefor, no bid firm as to price is submitted to an electric
562 utility for power transformers, distribution transformers, power
563 breakers, reclosers or other articles containing a petroleum
564 product, the electric utility may accept the lowest and best bid
565 therefor although the price is not firm.

566 (q) **Fuel management system bidding procedure.** Any
567 governing authority or agency of the state shall, before
568 contracting for the services and products of a fuel management or
569 fuel access system, enter into negotiations with not fewer than
570 two (2) sellers of fuel management or fuel access systems for
571 competitive written bids to provide the services and products for
572 the systems. In the event that the governing authority or agency
573 cannot locate two (2) sellers of such systems or cannot obtain
574 bids from two (2) sellers of such systems, it shall show proof
575 that it made a diligent, good-faith effort to locate and negotiate
576 with two (2) sellers of such systems. Such proof shall include,
577 but not be limited to, publications of a request for proposals and
578 letters soliciting negotiations and bids. For purposes of this
579 paragraph (q), a fuel management or fuel access system is an
580 automated system of acquiring fuel for vehicles as well as
581 management reports detailing fuel use by vehicles and drivers, and
582 the term "competitive written bid" shall have the meaning as
583 defined in paragraph (b) of this section. Governing authorities



584 and agencies shall be exempt from this process when contracting
585 for the services and products of a fuel management or fuel access
586 systems under the terms of a state contract established by the
587 Office of Purchasing and Travel.

588 (r) **Solid waste contract proposal procedure.** Before
589 entering into any contract for garbage collection or disposal,
590 contract for solid waste collection or disposal or contract for
591 sewage collection or disposal, which involves an expenditure of
592 more than Fifty Thousand Dollars (\$50,000.00), a governing
593 authority or agency shall issue publicly a request for proposals
594 concerning the specifications for such services which shall be
595 advertised for in the same manner as provided in this section for
596 seeking bids for purchases which involve an expenditure of more
597 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
598 when issued shall contain terms and conditions relating to price,
599 financial responsibility, technology, legal responsibilities and
600 other relevant factors as are determined by the governing
601 authority or agency to be appropriate for inclusion; all factors
602 determined relevant by the governing authority or agency or
603 required by this paragraph (r) shall be duly included in the
604 advertisement to elicit proposals. After responses to the request
605 for proposals have been duly received, the governing authority or
606 agency shall select the most qualified proposal or proposals on
607 the basis of price, technology and other relevant factors and from
608 such proposals, but not limited to the terms thereof, negotiate
609 and enter contracts with one or more of the persons or firms
610 submitting proposals. If the governing authority or agency deems
611 none of the proposals to be qualified or otherwise acceptable, the
612 request for proposals process may be reinitiated. Notwithstanding
613 any other provisions of this paragraph, where a county with at
614 least thirty-five thousand (35,000) nor more than forty thousand
615 (40,000) population, according to the 1990 federal decennial
616 census, owns or operates a solid waste landfill, the governing



617 authorities of any other county or municipality may contract with
618 the governing authorities of the county owning or operating the
619 landfill, pursuant to a resolution duly adopted and spread upon
620 the minutes of each governing authority involved, for garbage or
621 solid waste collection or disposal services through contract
622 negotiations.

623 (s) **Minority set aside authorization.** Notwithstanding
624 any provision of this section to the contrary, any agency or
625 governing authority, by order placed on its minutes, may, in its
626 discretion, set aside not more than twenty percent (20%) of its
627 anticipated annual expenditures for the purchase of commodities
628 from minority businesses; however, all such set-aside purchases
629 shall comply with all purchasing regulations promulgated by the
630 Department of Finance and Administration and shall be subject to
631 bid requirements under this section. Set-aside purchases for
632 which competitive bids are required shall be made from the lowest
633 and best minority business bidder. For the purposes of this
634 paragraph, the term "minority business" means a business which is
635 owned by a majority of persons who are United States citizens or
636 permanent resident aliens (as defined by the Immigration and
637 Naturalization Service) of the United States, and who are Asian,
638 Black, Hispanic or Native American, according to the following
639 definitions:

640 (i) "Asian" means persons having origins in any of
641 the original people of the Far East, Southeast Asia, the Indian
642 subcontinent, or the Pacific Islands.

643 (ii) "Black" means persons having origins in any
644 black racial group of Africa.

645 (iii) "Hispanic" means persons of Spanish or
646 Portuguese culture with origins in Mexico, South or Central
647 America, or the Caribbean Islands, regardless of race.



648 (iv) "Native American" means persons having
649 origins in any of the original people of North America, including
650 American Indians, Eskimos and Aleuts.

651 (t) **Construction punch list restriction.** The
652 architect, engineer or other representative designated by the
653 agency or governing authority that is contracting for public
654 construction or renovation may prepare and submit to the
655 contractor only one (1) preliminary punch list of items that do
656 not meet the contract requirements at the time of substantial
657 completion and one (1) final list immediately before final
658 completion and final payment.

659 (u) **Contractor bidding prohibition.** A contractor is
660 prohibited from bidding on any public construction or renovation
661 project for any agency if the contractor already has an
662 outstanding contract or contracts with any agency or agencies for
663 public construction or renovation projects of which the total
664 amount is Thirty Million Dollars (\$30,000,000.00) or more.

665 (v) **Purchase authorization clarification.** Nothing in
666 this section shall be construed as authorizing any purchase not
667 authorized by law.

668 **SECTION 2.** This act shall take effect and be in force from
669 and after July 1, 2003.

